

Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

HUNTON ANDREWS KURTH LLP

Brandon Marvisi (SBN 329798)
bmarvisi@HuntonAK.com
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627
Telephone: (213) 532-2000
Facsimile: (213) 532-2020

George P. Sibley, III (admitted *pro hac vice*)
Kevin S. Elliker (admitted *pro hac vice*)
951 East Byrd Street
Richmond, Virginia 2321
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

Andrew J. Turner (admitted *pro hac vice*)
Todd S. Mikolop (admitted *pro hac vice*)
2200 Pennsylvania Avenue NW
Washington, DC 20037
Telephone: (202) 955-1658
Facsimile: (202) 778-2201

Attorneys for Plaintiff
BLUETRITON BRANDS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE

BLUETRITON BRANDS, INC.,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,
et al.,

Defendants.

Case No. 2:24-cv-09720-JGB-DTB

**SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: January 13, 2025
Hearing Time: 9:00 AM
Courtroom: 1
Judge: Hon. Jesus G. Bernal
Action Filed: August 6, 2024

Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

1 On August 6, 2024, Plaintiff BlueTriton Brands, Inc. (BlueTriton) moved for a
2 preliminary injunction to enjoin the United States Forest Service’s (USFS) unlawful
3 denial of BlueTriton’s use of a right-of-way through the San Bernardino National
4 Forest (SBNF) to transport water BlueTriton has collected for over a century from
5 Arrowhead Springs in Strawberry Canyon pursuant to 150-year-old vested water
6 rights. ECF No. 2. Since 1930, USFS has conditioned BlueTriton’s access through
7 permits. ECF No. 2.

8 The USFS’s July 27, 2024, denial of BlueTriton’s application to renew its
9 permit would eliminate BlueTriton’s access to its water and require removal of the
10 water collection system BlueTriton installed and maintained over decades. The USFS
11 allowed BlueTriton to use the system through September 2, 2024, but only to deliver
12 water to the San Manuel Band of Mission Indians (SMBMI). ECF No. 15-21. USFS
13 subsequently continued that limited authorization through January 15, 2025. ECF No.
14 27-1. After the case was transferred to this Court, BlueTriton requested a further
15 extension, but USFS has thus far refused. ECF No. 59. Starting January 16, 2025,
16 USFS will be free to order BlueTriton to implement the approved decommissioning
17 plan at an unrecoverable cost to BlueTriton of roughly \$12MM. ECF No. 34.

18 In this litigation, the USFS argues that it based its challenged actions on the
19 California State Water Resources Control Board’s September 2023 Order, which
20 found that BlueTriton lacked appropriative right to the water collected at some, but
21 not all, of the sources at Arrowhead Springs. ECF No. 2-1 at 11. BlueTriton
22 challenged the Order, and the reviewing State court stayed it. The parties in that State
23 court litigation have agreed in principle on a briefing and hearing schedule on
24 dispositive cross-motions that allows for hearing on March 12, 2025.

25 BlueTriton’s preliminary-injunction motion is governed by the familiar four-
26 part *Winter* test. *All. For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
27 2011). The Ninth Circuit has expressly endorsed the “sliding scale” approach to
28 preliminary injunctions. *Id.* “[W]here parties cannot typically recover monetary

1 damages flowing from their injury—as is often the case in APA cases—economic
2 harm can be considered irreparable.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d
3 640, 677 (9th Cir. 2021).

4 As to the merits, the principles underlying BlueTriton’s APA challenge flow
5 from Supreme Court precedent, *see* ECF 2-1 at 17-22, so they apply the same in this
6 Court as in D.C. Furthermore, this Court is bound by *Adams v. United States*, 3 F.3d
7 1254, 1260 (9th Cir. 1993), which recognizes the federal government’s obligation to
8 respect vested water rights and grant the rightsholder a right-of-way to access that
9 water, subject only to “reasonable regulation.” Beyond its premature reliance on a
10 stayed State agency order, USFS’s failure to even acknowledge its prior recognition of
11 BlueTriton’s vested rights is reason enough to find BlueTriton likely to succeed on the
12 merits and thus entitled to the requested preliminary injunction. *See* ECF 26 at 4.

13
14
15 Dated: January 8, 2025

HUNTON ANDREWS KURTH LLP

16
17 By: /s/ Brandon Marvisi
18 Brandon Marvisi
19 Attorneys for Plaintiff
20 BLUETRITON BRANDS, INC.
21
22
23
24
25
26
27
28

Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for Plaintiff BlueTriton Brands, Inc.,
certifies that this brief contains 488 words, which complies with Local Rule 11-6.1

Dated: January 8, 2025

HUNTON ANDREWS KURTH LLP

By: /s/ Brandon Marvisi
Brandon Marvisi
Attorneys for Plaintiff

Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is 550 South Hope Street, Suite 2000, Los Angeles, California 90071-2627.

On January 8, 2025, I served the foregoing document(s) described as
SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

- ☐ **By MAIL:** by placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as stated above.
- ☐ **By PERSONAL SERVICE:** I delivered the envelope by hand on the addressee, addressed as stated above.
- ☐ **By OVERNIGHT MAIL:** by overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.
- ☒ **By ELECTRONIC MAIL:** by causing a true and correct copy thereof to be transmitted electronically to the attorney(s) of record at the e-mail address(es) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 8, 2025, Los Angeles, California.

/s/ Anuradha Das
Anuradha Das

Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627